

DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS 701 S. COURTHOUSE ROAD, SUITE 1001 ARLINGTON, VA 22204-2490

> Docket No. 5330-24 Ref: Signature Date

Dear

This is in reference to your application for correction of your naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your naval record and your application, the Board for Correction of Naval Records (Board) found the evidence submitted insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

Although your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 17 July 2024. The names and votes of the panel members will be furnished upon request. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of the Board. Documentary material considered by the Board consisted of your application together with all material submitted in support thereof, relevant portions of your naval record, and applicable statutes, regulations, and policies, to include the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice, or clemency determinations (Wilkie Memo).

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in the Navy and began a period of active duty on 9 November 2004. On 3 March 2005, you received non-judicial punishment (NJP) for failure to obey a lawful order by wrongfully possessing alcohol in the Bachelor Enlisted Quarters. On 3 May 2005, you received a mental health evaluation and subsequently diagnosed with adjustment disorder with depressed mood and recommended for administrative separation from the naval service due to unsuitability. On 5 May 2005, you were issued a Page 13 counseling as a result of your "inability to adjust to the demands of the Navy."

Consequently, you were notified that you were being recommended for administrative discharge from the Navy by reason of convenience of the government on the basis of a physical or mental

condition. You waived your right to consult with counsel and elected to submit a written statement for consideration by the separation authority. The separation authority directed your administrative discharge from the Navy with an Honorable characterization of service and a reentry code of RE-4. On 8 June 2005, you were so discharged.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie Memo. These included, but were not limited to, your desire to change your reentry code and contention that your reenlistment code does not allow you to enroll for the Strategic Sealift Midshipman Program at the Maritime Academy. For purposes of clemency and equity consideration, the Board considered the documentation you provided in support of your application.

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board concluded that your assigned reentry code remains appropriate. The Board noted that applicable regulations authorize an assignment of a reentry code of RE-4 when a service member fails to meet physical or medical standards. Further, as you correctly pointed out in your application, there was no procedural defect, impropriety, or inequity in your assignment of an RE-4 reentry code since it was appropriately assigned in accordance with authorized regulatory guidance. Finally, absent a material error or injustice, the Board declined to summarily change a reentry code solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities.

While the Board carefully considered the evidence you submitted in mitigation and commends you on your recent sobriety, even in light of the Wilkie Memo and reviewing the record holistically, the Board did not find evidence of an error or injustice that warrants granting you the relief you requested or granting relief as a matter of clemency or equity. Accordingly, given the totality of the circumstances, the Board determined your request does not merit relief.

You are entitled to have the Board reconsider its decision upon submission of new matters, which will require you to complete and submit a new DD Form 149. New matters are those not previously presented to or considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

